



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No: WY-042-FOR; Docket ID: OSM-2012-0001]

Wyoming Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are removing a disapproval codified in OSM regulations concerning a 1986 proposed amendment to the enforcement provisions of the Wyoming regulatory program (the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The disapproval is no longer

necessary because Wyoming subsequently submitted and obtained approval of replacement regulations.

**EFFECTIVE DATE:** [Insert date of publication in the FEDERAL REGISTER] .

**FOR FURTHER INFORMATION CONTACT:** Jeffrey W. Fleischman,  
Telephone: 307.261.6550, Email address: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Discussion of Final Rule
- II. Procedural Determinations

**I. Discussion of Final Rule.**

By letter dated March 5, 2010 (SATS number: WY-042-FOR, Administrative Record Docket ID No. OSM-2012-0001), Wyoming requested that we remove the disapproval at 30 CFR 950.12(a)(12) of the proposed 1986 revisions to Chapter XVII of the rules and regulations of the Wyoming Department of Environmental Quality (WDEQ), Land Quality Division (LQD). Wyoming requests that we remove the disapproval because the state believes that retention of the disapproval is inconsistent with our subsequent approval of replacement rules for the disapproved amendment.

On May 1, 1986, the Wyoming Department of Environmental Quality (WDEQ), Land Quality Division (LQD) submitted proposed amendments to its approved regulatory program under SMCRA. The revisions to Chapter XVII of the LQD Rules and Regulations proposed to incorporate the concept of "minor violations" into the rules on inspection and enforcement. The inspector could cite minor violations in inspection reports rather than through issuance of the more standard notice of violation form.

However, we found that the proposed amendment to Chapter XVII did not provide for adequate enforcement of the approved Wyoming program and therefore was less effective than the Federal regulations. Specifically, the Director found that the proposed amendment was "not adequately limited to violations which are only minor," did not "ensure that operators who repeatedly incur minor infractions or who do not abate the minor infractions in a timely manner will be formally cited," and did not "ensure that minor infractions beyond some specified threshold number will be considered for purposes of determining a pattern of violations" (51 FR 42209, 42216, November 24, 1986). We subsequently disapproved "[a]ll revisions to Chapter XVII, which would have introduced a new enforcement scheme." See 30 CFR 950.12(a)(12) and 51 FR 42209, November 24, 1986.

On March 31, 1989, the WDEQ submitted additional proposed revisions to Chapter XVII to resolve the issues resulting in the disapproval of the 1986 amendment concerning that chapter. We subsequently approved the proposed revisions, finding that the "proposed rule is consistent with and no less stringent than the requirements of SMCRA and the regulations adopted pursuant to SMCRA regarding enforcement." See 55 FR 30221, 30230, July 25, 1990. In our 1990 approval, we stated that "[e]xamples of minor violations that will be identified in the inspection report, but may or may not be subject to formal notice of violation, are listed in chapter XVII, section 2(f)(i) through (f)(ix)." We also specified that "[o]nly those violations listed at that section may be noted in an inspection report" and "[a] formal notice of violation will be issued for all other violations." See 55 FR 30221, 30229.

Our approval in 1990 of Wyoming's 1989 proposed amendment to its enforcement rules meant that the disapproval at 30 CFR 950.12(a)(12) of the 1986 proposed amendment that the 1989 amendment replaced became moot. At Wyoming's request, we are removing 30 CFR 950.12(a)(12) in this final rule.

Removal of our disapproval of the 1986 proposed amendment does not alter the terms of our decisions on either the 1986 or the

1989 proposed amendments. Wyoming's March 5, 2010, letter confirms that the state has implemented and will continue to implement subsection 2(f) of its enforcement rules in a manner consistent with our 1990 approval of the 1989 proposed amendment. In other words, only those infractions listed in subsection 2(f) may be considered minor violations. All other violations will be cited by issuing a formal notice of violation.

## **II. Procedural Determinations.**

### Administrative Procedure Act

We are publishing this final rule without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA), 5 U.S.C. 553, provides an exception to notice and comment requirements when an agency finds that there is good cause for dispensing with notice and comment procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule.

Specifically, we have determined that notice and comment is unnecessary for this rule because it is nonsubstantive. As

discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

For the same reasons, we find that good cause exists under 5 U.S.C. 553(d)(3) to have the regulation become effective on a date that is less than 30 days after the date of publication in the Federal Register.

#### Executive Order 12866 - Regulatory Planning and Review

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. For these reasons, we find that:

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency for the reasons stated above.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues for the reasons stated above.

#### Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment.

This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

#### Small Business Regulatory Enforcement Fairness Act

As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. Therefore, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, and it will not—

- (1) Have an annual effect on the economy of \$100 million.
- (2) Cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.
- (3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.



#### Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

#### Federal Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

#### National Environmental Policy Act

This rule does not require an environmental assessment or environmental impact statement because section 702(d) of SMCRA,

30 U.S.C. 1292(d), provides that agency actions pertaining to approval of state regulatory programs do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

#### Executive Order 12988 - Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### Executive Order 13211 – Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant

adverse effect on the supply, distribution, or use of energy. This rule is not considered significant under Executive Order 12866, nor would it have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a statement of energy effects is not required.

#### Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes and have determined that the removal of a now-moot provision concerning a 1986 proposed amendment to the Wyoming regulatory program would not have substantial direct effects on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### Executive Order 12630 – Takings

Under the criteria in Executive Order 12630, this rule does not have significant takings implications; therefore, a takings implication assessment is not required. As discussed above, this rule removes a now-moot provision concerning a proposed amendment

to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

#### Executive Order 13132 – Federalism

This rule does not have federalism implications. For the reasons previously stated, it will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

#### Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

---

Allen D. Klein  
Regional Director  
Western Region

April 27, 2012

Date

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950 - Wyoming

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. In § 950.12:

- a. Remove “;and” from paragraph (a)(11) and add a period in its place; and
- b. Remove paragraph (a)(12).

[FR Doc. 2012-16940 Filed 07/10/2012 at 8:45 am; Publication Date: 07/11/2012]